IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10384 of 1998
With
SPECIAL CIVIL APPLICATION No. 10385 of 1998
With
SPECIAL CIVIL APPLICATION No. 10386 of 1998
With
SPECIAL CIVIL APPLICATION No. 10387 of 1998

For Approval and Signature:

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL NILPABEN NAGJIBHAI - Petitioner(s)
Versus
DISTRICT PRIMARY EDUCATION OFFICER & 3 - Respondent(s)

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Appearance :
MR KB PUJARA for Petitioner(s) : 1,
MS NANDINI JOSHI for Respondent(s) : 4
MR J M BAROT FOR HS MUNSHAW for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,
UNSERVED-REFUSED (N) for Respondent(s) : 3,

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CORAM : THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 17/02/2006

ORAL JUDGMENT

1. These four writ petitions, pertain to the selection and appointment of the petitioners therein as Vidhya Sahayaks. The petitioners were appointed as Vidhya Sahayaks and posted at their respective places of posting, which postings, later on, were came to be cancelled. Being aggrieved by the impugned orders of cancellation of their postings, the petitioners approached this Court for the redressal of their grievance. Since the subject matter of these petitions and the issue involved for determination is the same, it is proposed to dispose of all these matters by a common judgment.

2. The petitioner of SCA No.10384 of 1998 was called for interview vide interview call letter dated 25.07.1998 issued by the District Primary Education Officer, which has been annexed as Annexure-A to all the petitions. Having been selected, the petitioner was called for exercising

her option to select the place of posting vide letter dated 25.10.1998 at an open camp arranged for this purpose on 05.11.1998(Annexure-B to all the writ petitions) of the respondent no.1. A perusal of letter dated 25.10.1998 shows that the petitioner has been asked to select her place of posting since she was at serial no.1 in the merit, in the general category, having secured 81.03% marks. According to the petitioner, as per the instructions dated 08.10.1998 issued by the Director of Primary Education Officer to all the District Primary Education Officers, the meritorious candidates were to be posted according to their choice. Accordingly, the petitioner was asked to give her option regarding place of posting, which she gave, and thereafter order dated 05.11.1998 was issued. The petitioner was posted to the place of her choice i.e. at Indiranagar (Sander) Primary School, Taluka Patan. She joined her duties on 12.11.1998 and remained at the said school until 2.12.1998, when she was relieved by the impugned order dated 25.11.1998 passed by the respondent no.1.

3. The petitioner of S.C.A.No.10385 of 1998 was called for the interview vide interview call letter dated 25.07.1998 issued by the District Primary Education Officer, annexed as Annexure-A. Having been selected, she was called to exercise her option for selection of place of posting vide letter dated 25.10.1998 of Respondent no.1 at the open camp arranged on 05.11.1998. A perusal of letter dated 25.10.1998 shows that the petitioner was at serial no.7 in the merit, in the general category, having secured 79.30% marks. The petitioner gave her option and vide order dated 05.11.1998, was posted at Ramnagar Primary School, Taluka Patan. The petitioner joined her duties on 11.11.1998 and she discharged the same upto 02.12.1998, when she was relieved by the impugned order dated 25.11.1998 passed by the respondent no.1.

4. The petitioner of SCA No.10386 of 1998 was called for interview vide interview call letter dated 25.07.1998 issued by the District Primary Education Officer. She selected her place of posting at the

open camp as per her merit. She was at serial no.57 in the merit, in the general category. As per her option, she was posted vide order dated 05.11.1998 to the place of her choice i.e. at Mandotri Primary School, Taluka Patan. The petitioner joined her duties on 11.11.1998 and remained at the said school upto 02.12.1998 when she was relieved by the impugned order dated 25.11.1998 passed by the respondent no.1.

5. The petitioner of SCA No.10387 of 1998 was called vide interview call letter dated 25.07.1998 issued by the District Primary Education Officer and having been selected, she exercised her option for her place of posting. She was at serial no.107 in the merit, in general category, having secured 76.43% of marks. The petitioner joined her duties at Aghar Primary School, Taluka Patan on 12.11.1998 and she discharged the same at that place upto 03.12.1998, when she was relieved by the impugned order dated 25.11.1998 passed by the respondent no.1.

6. According to the petitioners the impugned orders dated 25.11.1998 cancelling their appointments, are arbitrary, illegal and discriminatory, since the same have been passed without hearing them. It is the case of the petitioners that they have been posted at the places of their own choice, after exercising the options called for by the respondents themselves vide order dated 25.10.1998. It was, therefore, not open to the respondents to unilaterally cancel the postings of the petitioners without any rhyme or reason, after they had already joined and were discharging their duties.

7. The petitioners submit that there are instructions issued by the Director of Primary Education dated 15.06.1998 and 08.10.1998 (annexed as Annexure-E colly. in all the petitions) to the effect that Vidhya Sahayaks are to be appointed to a particular school/village and they are not to be transferred. The petitioners, having been appointed in their respective primary schools, could not have been posted at any other place, in view of these

instructions. Therefore, the orders of cancellation of postings, passed by the respondent no.1 dated 25.11.1998 are violative of the instructions issued by the respondents themselves.

8. I have heard the learned counsel for the petitioners Shri K.B.Pujara and Mr.J.M.Barot, learned counsel appearing for respondent no.1 and have gone through the material on record. The stand taken in the replies filed by the respondent no.1 in all the petitions is identical. Mr.J.M.Barot has drawn the attention of this Court to Para-2 of the reply wherein it has been stated that the petitioners had requested for their postings and accordingly, their requests were considered and they were posted to the places of their choice. Later on, the Director of Primary Education issued instructions dated 19th November 1998, to the effect that appointments of all Vidhya Sahayaks, whose names were not notified on the board in the camp are illegal appointments. Hence, such Vidhya Sahayaks should not be allowed to continue at those places. The copy of these instructions has been

annexed at Annexure-E to the replies filed by the respondent no.1 in all the petitions.

9. A perusal of these instructions passed by the Director of Primary Education reveal that these are only general instructions. They do not point to any specific illegality in postings or any irregularity due to which the respondents cancelled the postings already given to the petitioners. Moreover, in the impugned orders cancelling the postings of the petitioners, no reason has been assigned. Nor has any further place of posting been indicated. It is not the case of the respondents that there was as irregularity or illegality in the posting orders of the petitioners, which necessitated their unilateral cancellation, after the incumbents had already joined their duties.

10. The replies filed by the respondent no.1 are vague and on general lines. There is no specific reply to the grievance set up by the petitioners, that after having exercised their options as per instructions of the respondents, and after having

been assigned particular places of posting at different schools, there was no cogent reason for cancellation of those postings. The orders of postings of the petitioners were never changed after the holding of the camp. The instructions state that the orders which were changed after taking place of the camp are required to be canceled. It is the case of the petitioners that they do not fall in that category, and, therefore, their orders of posting should not have been interfered with. In any case, they should have been permitted to explain their position. Further, there is no averment in the reply of the respondent no.1 that the posting orders suffer from any irregularity or infirmity, requiring them to be cancelled. In fact, there is no mention of the specific orders of the petitioners at all.

11. The petitioners have been posted at different schools after exercising the options invited by the respondent themselves. They joined at their respective places of posting and were discharging their duties when, all of a sudden, their posting

orders were cancelled. They were appointed as Vidhya Sahayaks, at a meagre honorarium of Rs.2500/- per month. Admittedly, they were not heard before the posting orders were canceled behind their backs without assigning any reasons. Moreover, no new place of posting was assigned to them and they were directed to report to the District Education Committee, Patan. Even it is assumed that certain administrative irregularities had taken place, as has been pointed out in the rejoinders filed by the petitioners, that was an internal matter, to be taken care of by the authorities in their own manner. It was upto the respondents to set their own house in order. The service conditions of the petitioners should not have been changed to their detriment for no fault of their own.

12. It is not disputed that before cancelling their orders of appointment, the respondents did not put the petitioners to notice or give them an opportunity of being heard. No reason has been assigned by the respondents to justify the cancellation of the appointment orders. Only vague

and general averments have been made which do not amount to any cogent or reasonable explanation. How these averments relate to the specific cases of the petitioners is also not at all clear. Although the respondents had the power to cancel the appointments, such power has to be exercised in a manner which does not violate the mandate of Articles 14 and 16 of the Constitution of India. Power cannot be exercised in an arbitrary or whimsical manner.

13. It is the settled position of law, that before passing an order which may operate to the detriment of a person, the Competent Authority is bound to give the affected party an opportunity of being heard.

14. What are the aims of the principles of natural justice, have been enunciated in the Constitution Bench Judgment of the Supreme Court reported in AIR 1970 SC P-150, titled as A K Kraipak Vs. Union of India, wherein it has been observed as under:-

> " The aim of the rules of the natural justice is to secure justice or to put it

negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely (1) no one shall be a judge in his own cause (Nemo debet esse judex propria causa), and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably.”.

15. The ratio of this judgment has been followed by the Supreme Court in 2001 Vol.1 SCC 182 Kumaon Mandal Vikas Nigam Ltd. Ltd. Vs. Girja Shankar Pant and others, wherein the Supreme Court has reiterated that the essential point to be kept in mind, in all cases, is that, the persons concerned should have a reasonable opportunity of presenting their case and that the administrative authority concerned should act reasonably. Where administrative officers are concerned, the duty is

not so much to act judicially as to act fairly.

16. In the present case, it is clear that the conditions of service of the petitioners have been altered to their detriment by the respondents, without giving them an opportunity to represent their case, thereby necessitating the filing of the present petitions. The respondents have clearly violated the rule of “Audi Alteram partum” and the impugned action of the respondents which has resulted in the issuance of the impugned orders suffers from the vice of arbitrariness, when tested on the touchstone of Article 14 of the Constitution of India.

17. These writ petitions are, therefore, allowed. The impugned orders are set aside. Rule issued in these petitions, is made absolute. It is submitted by the learned counsel for the petitioners that the petitioners have, by now, been regularized as Primary Teachers. It is made clear that the setting aside of the impugned orders pertains only to the appointments of the petitioners as Vidhya Sahayaks

and has nothing to do with their regular appointments, if any, as Primary Teachers. The writ petition is disposed of in the above terms. There shall be no order as to costs.

(ABHILASHA KUMARI, J.)

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